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| 09/888,247      | 06/22/2001  | James Mark Weaver    | 6169-190            | 8739             |

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AKERMAN SENTERFITT  
P. O. BOX 3188  
WEST PALM BEACH, FL 33402-3188

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| EXAMINER |
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KLINGER, SCOTT M

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| ART UNIT | PAPER NUMBER |
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2153

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/888,247

Applicant(s)

WEAVER, JAMES MARK

Examiner

Scott M. Klinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Claims 1-11 are pending.

#### ***Response to Arguments***

Applicant's arguments, with respect to the rejection of claims 1-5, 8, and 11 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Terranova.

In referring to claims 6 and 9, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "compute computational latency") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is noted that claims 7 and 10 are independent claims, and were not addressed as such in applicant's remarks/arguments. However, said claims are parallel in scope to claims 6 and 9, and will be treated as such.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 6, 7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Marullo et al. (U.S. Patent Number 6044398, hereinafter "Marullo"). Marullo discloses virtual dynamic browsing system and method for automated web server and testing. Marullo shows,

In referring to claim 6,

- A subscribing e-commerce system:

*Marullo, col. 30, lines 58-61 (see full quote above)*

- A back-end transaction processing system associated with a subscribing e-commerce system:

Marullo, Fig. 3 shows a back end processing system 62, 64, and 66, associated with a subscribing e-commerce system 32, 54.

- Generating a placebo transaction; dispatching said placebo transaction to the e-commerce system; determining if a response to said placebo transaction is received:

*Marullo, col. 4, lines 49-54 (see full quote above)*

- If no response to said placebo transaction is received prior to detecting a time-out condition, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized" (Marullo, col. 27, lines 49-54); a system uses SSL and that logs any errors encountered inherently implies logging errors due to timeouts/high network latency*

- If a response to said placebo transaction is received after period of time has elapsed from said dispatching of said placebo transaction which exceeds a latency threshold, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized" (Marullo, col. 27, lines 49-54); if a reply is received after a timeout has occurred an invalid response will be received and logged*

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In referring to claim 7,

- A subscribing e-commerce system:

*Marullo, col. 30, lines 58-61 (see full quote above)*

- A back-end transaction processing system associated with a subscribing e-commerce system:

Marullo, Fig. 3 shows a back end processing system 62, 64, and 66, associated with a subscribing e-commerce system 32, 54.

- Generating a placebo transaction; dispatching said placebo transaction to the back-end transaction processing system; determining if a response to said placebo transaction is received:

*Marullo, col. 4, lines 49-54 (see full quote above)*

- If no response to said placebo transaction is received prior to detecting a time-out condition, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized"* (Marullo, col. 27, lines 49-54); a system uses SSL and that logs any errors encountered inherently implies logging errors due to timeouts/high network latency

- If a response to said placebo transaction is received after period of time has elapsed from said dispatching of said placebo transaction which exceeds a latency threshold, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized"* (Marullo, col. 27, lines 49-54); if a reply is received after a timeout has occurred an invalid response will be received and logged

In referring to claim 9,

- A subscribing e-commerce system:

*Marullo, col. 30, lines 58-61 (see full quote above)*

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- A back-end transaction processing system associated with a subscribing e-commerce system:

Marullo, Fig. 3 shows a back end processing system 62, 64, and 66, associated with a subscribing e-commerce system 32, 54.

- Generating a placebo transaction; dispatching said placebo transaction to the e-commerce system; determining if a response to said placebo transaction is received:

*Marullo, col. 4, lines 49-54 (see full quote above)*

- If no response to said placebo transaction is received prior to detecting a time-out condition, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized" (Marullo, col. 27, lines 49-54); a system uses SSL and that logs any errors encountered inherently implies logging errors due to timeouts/high network latency*

- If a response to said placebo transaction is received after period of time has elapsed from said dispatching of said placebo transaction which exceeds a latency threshold, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized" (Marullo, col. 27, lines 49-54); if a reply is received after a timeout has occurred an invalid response will be received and logged*

In referring to claim 10,

- A subscribing e-commerce system:

*Marullo, col. 30, lines 58-61 (see full quote above)*

- A back-end transaction processing system associated with a subscribing e-commerce system:

Marullo, Fig. 3 shows a back end processing system 62, 64, and 66, associated with a subscribing e-commerce system 32, 54.

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- Generating a placebo transaction; dispatching said placebo transaction to the back-end transaction processing system; determining if a response to said placebo transaction is received:

*Marullo, col. 4, lines 49-54 (see full quote above)*

- If no response to said placebo transaction is received prior to detecting a time-out condition, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized"* (Marullo, col. 27, lines 49-54); a system uses SSL and that logs any errors encountered inherently implies logging errors due to timeouts/high network latency

- If a response to said placebo transaction is received after period of time has elapsed from said dispatching of said placebo transaction which exceeds a latency threshold, notifying the e-commerce system that an unreliable response condition exists in the back-end transaction processing system:

*"If yes, it is determined whether SSL is required, 138. If yes, SSI cipher/version timeouts are initialized"* (Marullo, col. 27, lines 49-54); if a reply is received after a timeout has occurred an invalid response will be received and logged

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 4, 5, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marullo in view of Terranova et al. (U.S. Patent Number 6,868,434, hereinafter "Terranova").

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In referring to claims 1 and 4, Marullo shows substantial features of the claimed invention, including:

- A subscribing e-commerce system:

*"Turning now to FIG. 18, depicted therein is a flow diagram of the genautoAPI subsystem for generating customizable web server pages to test Internet business transactions."* (Marullo, col. 30, lines 58-61)

- A placebo transaction dispatcher for dispatching placebo transactions to a subscribing e-commerce system; a response collector for collecting responses to dispatched placebo transactions:

*"An Internet website virtual browser application automatically exercises and verifies web server applications and scripts by simulating a web browser to request, capture, store, and verify data returned from web servers, discarding data not critical to testing, and saving and reusing retained data for subsequent transactions."* (Marullo, col. 4, lines 49-54)

- A logger for computing data based the placebo transactions:

*"The request and byte count therefore, total number of bytes transferred, time of transaction, throughput or transfer time, and result of compares are stored in a log file ... and sleep values between requests may be user-specified to simulate actual users and to test session timeouts."* (Marullo, col. 5, lines 1-13)

- An alerter for alerting said subscribing e-commerce system when an unreliable response condition is generated by the system:

Marullo, Figs. 9A-B shows the output of the monitoring tool, which displays all of tests that returned invalid responses

However, Marullo does not show measuring transaction latency data. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Marullo as evidenced by Terranova.

In analogous art, Terranova discloses system and method for testing server latencies using multiple concurrent users in a computer system. Terranova shows *"system and method for testing server latencies using multiple concurrent users in a computer system is provided"*



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(Terranova, col. 1, lines 48-50)

Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Marullo so as to measure transaction latency data, such as taught by Terranova, in order to monitor how the system under test handles multiple clients.

In referring to claims 2 and 5, Marullo in view of Terranova shows,

- A user interface through which a user can monitor said transaction latency data:

Marullo, Figs. 9A-B shows the user interface output of the monitoring tool, which displays all of tests that returned invalid responses

In referring to claims 3, 8, and 11, although Marullo in view of Terranova shows substantial features of the claimed invention, Marullo in view of Terranova does not explicitly show a list of systems to test. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Marullo in view of Terranova.

Although Marullo in view of Terranova doesn't explicitly state that there is a list of servers, Marullo does show that there can be a plurality of servers: "*It is assumed that a communication path is established from the server(s) 54, to the institution 64 through a core controller 62*" (Marullo, col. 6, lines 15-18). Marullo in view of Terranova implies that if there were more than one server they would all be tested.

A person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Marullo in view of Terranova so as to list the servers if the system has multiple servers, in order to test a system with multiple servers using one testing system.

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***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Klinger whose telephone number is (571) 272-3955. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott M. Klinger  
Examiner  
Art Unit 2153

smk

  
GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100